

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARAGE BENJAMIN HAYES,
Plaintiff,

v.

ALAMEDA COUNTY SHERIFF
DEPARTMENT, et al.,
Defendants.

Case No. [14-cv-02408-JSC](#)

**ORDER OF PARTIAL DISMISSAL
AND OF SERVICE**

INTRODUCTION

Plaintiff, an inmate at the Santa Rita County Jail, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against the Alameda County Sherriff's Department, officials working at the jail, and two private companies that provide services at the jail.¹ The complaint was dismissed with leave to amend, and Plaintiff filed a timely amended complaint. The Court has reviewed the amended complaint, and for the reasons explained below, it is dismissed in part and ordered served upon certain Defendants.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Dkt. 4.)

1 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

2 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement
3 of the claim showing that the pleader is entitled to relief.” “Specific facts are not
4 necessary; the statement need only give the defendant fair notice of what the . . . claim is
5 and the grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007)
6 (citations omitted). Although to state a claim a complaint “does not need detailed factual
7 allegations, . . . a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief
8 requires more than labels and conclusions, and a formulaic recitation of the elements of a
9 cause of action will not do. . . . Factual allegations must be enough to raise a right to
10 relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-
11 65 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim for
12 relief that is plausible on its face.” *Id.* at 1974. Pro se pleadings must be liberally
13 construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
15 (1) that a right secured by the Constitution or laws of the United States was violated, and
16 (2) that the alleged violation was committed by a person acting under the color of state
17 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 LEGAL CLAIMS

19 In his original complaint, Plaintiff claimed that that he can no longer purchase bar
20 soap in the jail canteen, and that he was denied dental and medical care for a “hole” in his
21 tooth and an abscess on the back of his head. The complaint was dismissed because
22 Plaintiff did not allege any conduct by the Defendants or how they were involved in the
23 alleged violation of his rights. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). In
24 addition, Plaintiff did not allege any facts showing how he was deprived of necessary
25 dental and medical care. The complaint was therefore dismissed with leave to amend, and
26 Plaintiff was instructed that to state a cognizable claim for relief, he would have to allege
27 in his amended complaint how each defendant was involved in, and caused, the alleged
28 violations of his rights. He was also instructed to describe how he did not receive adequate

1 medical and dental care.

2 In his amended complaint, Plaintiff alleges that in March 2014, he requested
3 treatment for a “hole” in one of his molars that was causing “excruciating pain” and
4 preventing him from eating. The unnamed nurse on duty told him that she put his name on
5 a list for care but that there were 4000 inmates ahead of him. When he complained about
6 this in an administrative grievance, Defendant Sergeant R. MacIntire denied him
7 immediate dental care because it was not an emergency. Plaintiff also alleges that there is
8 only one dentist to care for 5,000 inmates at the jail. When liberally construed, Plaintiff’s
9 allegations are sufficient to state a cognizable claim against Defendant MacIntire and the
10 Alameda County Sheriff’s Department for being deliberately indifferent to his serious
11 dental needs in violation of the Fourteenth Amendment by, in MacIntire’s case, denying
12 his request for dental care and, in the case of the Sheriff’s Department, maintaining
13 insufficient number of dentists for the inmate population.²

14 Plaintiff also complains that the Sheriff’s Department only provides 1.4 ounces of
15 liquid soap per week to indigent inmates such as himself, and that it removed bar soap
16 from the canteen. According to Plaintiff, Defendant MacIntire denied his grievance
17 requesting more soap on the grounds that the Sheriff’s Department is not obligated to
18 provide soap at an adult facility. When liberally construed, these allegations are sufficient
19 to state a cognizable claim for the violation of Plaintiff’s Fourteenth Amendment rights.
20 *Cf. Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996), *amended*, 135 F.3d 1318 (9th Cir.
21 1998) (Eighth Amendment guarantees state prisoner’s right to personal hygiene, including
22 toothbrushes and soap); *see also Toussaint v. McCarthy*, 597 F. Supp. 1388, 1411 (N.D.
23 Cal. 1984) (“A sanitary environment is a basic human need that a penal institution must

24
25 ² Because Plaintiff was in jail and not state prison, and presumably a pretrial detainee, at the time
26 of the alleged violations, **Error! Main Document Only**, the Due Process Clause of the Fourteenth
27 Amendment governs his claims about the conditions of his confinement. *See Bell v. Wolfish*, 441
28 U.S. 520, 535 n.16 (1979). Nevertheless, the Eighth Amendment serves as a benchmark for
evaluating such claims. *Carnell v. Grimm*, 74 F.3d 977, 979 (9th Cir. 1996) (8th Amendment
guarantees provide minimum standard of care for pretrial detainees). So, for example, the
deliberate indifference standard of the Eighth Amendment applies to medical claims by pretrial
detainees in county jail. *See id.*

1 provide for all inmates”).

2 Lastly, Plaintiff alleges that he requested medical care for an abscess on the back of
3 his head because it was sore and leaking. Dr. D. Moore examined Plaintiff on May 9,
4 2014, said he would call Plaintiff back to the clinic to remove the abscess, and prescribed
5 him pain medication and antibiotics. As of June 23, 2014, Plaintiff had not been contacted
6 by Dr. Moore. When liberally construed, these allegations are sufficient to state a
7 cognizable claim against Dr. Moore for being deliberately indifferent to Plaintiff’s serious
8 medical needs in violation of the Fourteenth Amendment.

9 Plaintiff does not allege how Defendants Corizon Health Care, C. Noriega, or R.
10 Carter were involved in the alleged violation of his constitutional rights. The only
11 allegations against Defendant Trinity Services Group is that one of their employees
12 informed Plaintiff that Sheriff’s Department officials removed soap from the canteen. This
13 allegation, even if true and liberally construed, does not establish that Trinity Services
14 Group was involved in or caused any of the alleged constitutional violations. As Plaintiff
15 has not cured the deficiency in the original complaint in the claims against these
16 defendants, these claims will be dismissed. As Plaintiff has already been given leave to
17 amend as to these defendants, and failed to cure the defects, the dismissal shall be with
18 prejudice.

19 CONCLUSION

20 For the foregoing reasons,

21 1. The claims against Defendants Corizon Health Care, C. Noriega, R. Carter,
22 and Trinity Services Group are DISMISSED with prejudice. The Clerk shall issue a
23 summons and Magistrate Judge jurisdiction consent form and the United States Marshal
24 shall serve, without prepayment of fees, the summons, the Magistrate Judge jurisdiction
25 consent form, a copy of the amended complaint with attachments thereto, and a copy of
26 this order upon: the Alameda County Sheriff’s Department, Sergeant R. MacIntire, and Dr.
27 D. Moore at the Santa Rita County Jail in Dublin, California.

28 The Clerk shall also mail a courtesy copy of the amended complaint with all

1 attachments and a copy of this order to the Alameda County Counsel's Office.

2 2. Each Defendant shall complete and file their own Magistrate Judge jurisdiction
3 consent form within **28 days** of the date they are served, or **91 days** of the date this order is
4 filed, whichever comes first. If all of the Defendants consent to a Magistrate Judge's
5 jurisdiction, then: a. Defendants shall file an answer in accordance with the Federal Rules
6 of Civil Procedure.

7 b. No later than **91** days from the date this order is issued, Defendants shall file a
8 motion for summary judgment or other dispositive motion. The motion shall be supported
9 by adequate factual documentation and shall conform in all respects to Federal Rule of
10 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
11 from the events at issue. If Defendant is of the opinion that this case cannot be resolved by
12 summary judgment, he shall so inform the Court prior to the date his summary judgment
13 motion is due. All papers filed with the Court shall be promptly served on Plaintiff.

14 c. At the time the dispositive motion is served, Defendants shall also serve, on a
15 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954
16 (9th Cir. 1998) (en banc).

17 d. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
18 Court and served upon Defendants no later than **28** days from the date the motion is filed.
19 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided
20 to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and
21 *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

22 e. Defendants **shall** file a reply brief no later than **14** days after the opposition is
23 filed.

24 f. The motion shall be deemed submitted as of the date the reply brief is due. No
25 hearing will be held on the motion unless the court so orders at a later date.

26 3. All communications by Plaintiff with the Court must be served on Defendants,
27 or Defendants' counsel once counsel has been designated, by mailing a true copy of the
28 document to Defendants or Defendants' counsel.

4. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the parties may conduct discovery.

5. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He also must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

6. Requests for a reasonable extension of time will be considered if supported by a showing of good cause and filed prior to the deadline sought to be extended.

IT IS SO ORDERED.

Dated: October 10, 2014


 JACQUELINE SCOTT CORLEY
 UNITED STATES MAGISTRATE JUDGE

United States District Court
 Northern District of California

NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.